

Before the
DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration
DEPARTMENT OF AGRICULTURE
Rural Utilities Service
Washington, DC

In the matter of)	
)	
American Recovery and Reinvestment)	Docket No. 0907141137–91375–05
Act of 2009 Broadband Initiatives)	
_____)	

COMMENTS OF RURAL BROADBAND NOW!

Rural Broadband Now! (RBN) offers these comments in response to the Joint Request for Information (RFI) published November 16, 2009, inviting interested parties to submit comments on certain designated topics that will assist the National Telecommunications and Information Administration (NTIA) and Rural Utilities Service (RUS) in assessing and revising, if necessary, the first Notice of Funds Availability (NOFA)—as well as in generally improving the application process relating to the NTIA’s Broadband Technology Opportunities Program (BTOP) and the RUS’ Broadband Initiatives Program (BIP) established pursuant to the American Recovery and Reinvestment Act (Recovery Act).¹

¹ See, Section 6001 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), Pub. L. 111-5, 123 Stat. 115 (February 17, 2009), which requires NTIA, in consultation with the Federal Communications Commission, to establish the Broadband Technology and Opportunities Program. The Recovery Act further establishes authority for RUS to make grants and loans for the deployment and construction of broadband systems.

EXECUTIVE SUMMARY

RBN provides comments and recommendations specific to the middle-mile mapping process and encourages the NTIA and RUS to consider (a) adopting separate and distinct mapping tools for last-mile and middle-mile applications, as well as (b) providing uniform guidance on what assumptions to apply when defining the last-mile reach of a middle-mile project.

RBN supports targeting funds to middle mile “comprehensive community” projects and views strong support among community anchor institutions as a key factor in project success.

RBN recommends a revised definition of “remote” that addresses unserved or underserved area at least 50 miles from a city or town with a population greater than 50,000. RBN further recommends that population density, unemployment trends, and areas with higher proportions of children and young adults should be factors considered for eligibility in the RUS grant program.

RBN offers that the application process should provide greater transparency to applicants with respect to challenges lodged against the unserved and underserved status of the proposed funded service area, and, further, allow applicants a reasonable opportunity to rebut the challenge, particularly where currently-available mapping tools fail to adequately distinguish between service potential and actual service delivered at affordable rates.

Finally, RBN recommends that the second NOFA allow the government flexibility to approve the sale or lease of project assets on a case-by-case basis, at any time.

INTRODUCTION

RBN is a California competitive local exchange carrier seeking to offer broadband services in Mendocino County—where, owing to its rural character, unemployment exceeds 10 percent and over 18% of its population falls below the poverty line. With the overwhelming support of the county’s anchor institutions, RBN has developed a plan to construct middle-mile facilities that will leverage existing, underutilized copper plant in the short term, and support the deployment of last-mile fiber facilities over the long term. That is, the proposed Project will, upon completion, result in a path-diverse fiber optic ring, interconnecting a total of 26 Verizon and AT&T central and remote office locations that provide access to the existing last-mile copper networks. The resulting middle-mile transport network will resolve the constrained facility issue between the Verizon and AT&T central offices and remote central offices, as well as introduce advanced broadband services at affordable rates.

RBN’s parent company, WillitsOnline, has offered high-speed wireless broadband in several Mendocino County communities for over seven years. RBN was established to address, among other things, the need for improved terrestrial broadband access throughout the county. Thus, RBN approaches the BTOP application process from the perspective of a small business focused on no other region than the local communities of Mendocino County.

RESPONSE TO THE REQUEST FOR INFORMATION

I. Streamlining Applications

a. Specification of Service Areas.

Question 12 of the Joint Application asked applicants to produce service area maps for each proposed funded service area using the Broadband USA mapping tool. For middle-mile

projects, the maps were to indicate the “service areas that will benefit from the project.” Moreover, per the NOFA, the Joint Application required that at least one interconnection point for a middle-mile project terminate in a proposed funded service area that qualifies as unserved or underserved for a last-mile project. Similarly, Question 14 asked applicants to provide population, households, businesses and anchor institutions data for each “associated last mile service area,” leaving middle-mile applicants to define the boundaries of that last mile service area in a way that, depending on their individual assumptions, may or may not leave the application reviewers with an “apples-to-apples” comparison of middle-mile projects.

In practice, determining service areas that will benefit from a middle-mile network is rather speculative. That is, the potential breadth and reach of middle-mile facilities depends on the nature of the last-mile facilities—copper, fiber, wireless, etc.—which, for the most part, are factors outside the control of the middle-mile applicant. Looking at the big picture, the application process should ensure that the applicant produces an accurate and detailed route map of its proposed middle-mile network. This route map should depict planned access points (that is, where a last-mile provider may establish a point of interconnection with the middle-mile network). Then, middle-mile projects should be scored on their proportion of access points in unserved and underserved communities. That is, projects where all access points are in underserved areas should be scored more favorably than projects satisfying only the required minimum of having one access point in an underserved area.

Using census blocks to define last-mile service areas where an access point to a middle-mile network is located proved cumbersome, to say the least. The access point is typically located in an existing telco facility—or at least that’s usually the most cost-effective approach, the alternative being construction of a new facility. That telco facility may be located in a census block that – because of its proximity to that very same telco facility – enjoys adequate broadband availability. The applicant then looks to the surrounding census blocks where potential last-mile facilities might extend, but such an

exercise is speculative, at best. For middle-mile projects, it seems that the application should look to ascertain the unserved/underserved status of the entire census designated community where an access point is located, and, if no such community exists, then it should look to the census block group where an access point is located. Such an approach would minimize the opportunity for applicants to skew service area boundaries to satisfy threshold criteria in otherwise marginally qualified, or predominantly unqualified areas.

The mapping tool used in the first round resulted in something of a “form over substance” approach with respect to middle-mile applications. Appreciating that standardization among the thousands of applications is necessary to streamline review, the application process should also encourage applicants to provide maps in the format they would use for ordinary business purposes, with appropriate narrative explanation, in addition to the “one-size-fits-all” mapping tool.

In sum, the mapping tool and service area boundary requirements for middle-mile applicants was awkward in practice. Surely, everyone did the best they could with the information and tools at hand; however, in crafting the second round NOFA and application format, RBN encourages the NTIA and RUS to consider (a) adopting separate and distinct mapping tools for last-mile and middle-mile applications, as well as (b) providing uniform guidance on what assumptions to apply when defining the last-mile reach of a middle-mile project.

b. Mapping Assumptions with Respect to Unserved and Underserved Areas.

Appreciating that the development of broadband mapping tools is its own challenge—and subject of additional Recovery Act funding—RBN encourages the NTIA and RUS to ensure that where state data (or, frankly, any broadband availability data reported by service providers) is used, that such data includes advertised rates. In RBN’s case, the California Public Utilities Commission data that was reviewed during the BTOP application process appeared to include broadband services that, upon closer examination and based on RBN’s familiarity with the service area in question, would

not reasonably be classified as “available” because of the extraordinary and commercially unreasonable cost of such services. The onus of substantiating the veracity of claims that a provider offers broadband in an area should rest with that provider. RBN is concerned, generally, that it’s too easy for existing, underperforming providers in an area to overstate service availability as a barrier to entry for competitive providers.

II. Funding Priorities and Objectives

a. Middle-Mile “Comprehensive Community” Projects.

RBN appreciates the NTIA and RUS’ efforts to look at different approaches in the second round to achieve the greatest impact with the remaining BTOP and BIP funds. The RFI requests proposals and comments on more targeted approaches to funding disbursement in the second round. RBN supports a focus on middle-mile “comprehensive community” projects. Such projects—which, by definition, have the support of key community anchor institutions—will ensure that funds are targeted to geographic areas with demonstrated demand for enhanced broadband access, as well as avoid the “build-it-and-they-will-come” scenarios. By their nature, projects that have customers at the ready will have a higher probability of success than those projects where the potential downstream revenue is more speculative.

Unserved and underserved proposed funded service areas fall into two categories: those where community anchor institutions suffer inadequate broadband access, and those where such institutions may enjoy reasonable broadband access, but the broader residential and/or small business constituencies do not. To be sure, both types of proposed funded service areas are worthy; however, RBN believes the greatest benefit would be accomplished by ensuring that key

community anchor institutions in all areas of the country are adequately served before the funding is more broadly dispersed to benefit individual residences and businesses.

To that end, in assessing middle-mile “comprehensive community” projects, the NTIA/RUS should look at the likelihood that the key community institutions will directly benefit from the project. Direct benefit does not require formal public-private partnerships. The NTIA and RUS should be neutral as to whether a proposed project employs a formal public-private partnership or a less formal, but nonetheless, substantial demand-side interest from the community institutions. What’s key is that the funded project delivers needed network facilities to key community anchor institutions in a cost-effective manner.

b. Economic Development.

RBN supports the NTIA and RUS’ efforts to support projects that promote regional economic development efforts. It’s not enough to assist one city or town in a larger, struggling region. As much as possible, Recovery Act funds should be disbursed in a manner that fosters cooperation—not competition—among cities and towns within a region. In Mendocino County, RBN has been encouraged by the level of support among local communities to improve broadband access throughout the county, and not just in their own “backyard.”

c. Definitions.

RUS has identified the definition of “remote” as one that many applicants—or potential applicants—complained of as being overly restrictive. The practical import of the “remote” definition is that only remote projects qualify for RUS grants. Defined in the first NOFA as “an unserved, rural area 50 miles from the limits of a non-rural area,” remote for all practical purposes would be more aptly described as an area more than 50 miles from a city or town with a

population greater than 50,000. To be sure, even a hard-and-fast measure such as 50 miles is imperfect; what's most relevant is the time it takes to get from the rural community to the more populous area. Significantly, Mendocino County does not enjoy the luxury of easy Interstate access to more urban areas. As defined in the first NOFA, however, any area within 50 miles of a town with even a 20,000 population would be considered non-remote. As a practical matter, there's a material difference between the opportunities and services available in a town of 20,000 versus 50,000. Along with the criteria of mileage and population statistics, RBN recommends that population density, unemployment trends, and areas with higher proportions of children and young adults should be factors considered for eligibility in the RUS grant program.

d. Public Notice of Service Areas.

As a lesson learned from the first round, the application process should provide greater transparency to applicants with respect to challenges lodged against the unserved and underserved status of the proposed funded service area, and, further, allow applicants a reasonable opportunity to rebut the challenge. Unfortunately, without such transparency, competing service providers may be incented to offer vague and unspecific allegations as a means to throw doubt on otherwise worthy applications.

Moreover, NTIA, RUS and their designated reviewers should remain mindful of the significant difference between service potential and actual service delivered. RBN has found this discrepancy particularly noticeable in the data published thus far by the California Public Utilities Commission (reflecting broadband availability as reported by service providers). RBN has discovered areas where wireless providers have reported to the CPUC that they provide service at, say, 10 Mbps, but, in reality, the equipment necessary to provide that level of

bandwidth has not been installed, and the cost of service would be extraordinary for any ordinary user—such that no customer is actually receiving the claimed level of service.

e. Sale of Project Assets.

RBN understands and appreciates the need for the government to maintain some form of accountability to ensure that projects constructed with grant proceeds serve their intended purpose. That said, the first NOFA's prohibitions on the sale or lease of project facilities was unreasonably broad in that it failed to provide flexibility for the government to consent to a reasonable lease or sale during the first ten years (unless the proposed lease or sale was included up front in the grant application). Assuming an overarching goal of ensuring that grant-funded projects improve broadband access for the long term, the government should have the flexibility to allow a subsequent lender providing needed funds to the grantee to take a co-lien position, or, to allow the grantee to make strategic corporate transactions that improve the likelihood of the long-range operational success of the grant-funded facilities. And, in a worst-case, distress situation, wouldn't the public interest be best-served by allowing a third-party to step in and keep the project assets operational (and within the accountability of the government)? RBN recommends that the second NOFA allow the government flexibility to approve the sale or lease of project assets on a case-by-case basis, at any time.

CONCLUSION

RBN appreciates the NTIA and RUS' willingness to consider feedback and recommendations resulting from the applicants' experience with the first round. RBN thanks the NTIA and RUS for the opportunity to provide the foregoing comments, and hopes these

comments help to facilitate improvements in both the second funding round and the overall success of the BTOP and BIP programs.

Respectfully submitted,

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On behalf of Rural Broadband Now!

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